

AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY APRIL 28, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1169

Introduced by Assembly Member Ruskin

February 27, 2009

An act to amend ~~Sections 1788 and~~ Section 1790 of the Health and Safety Code, relating to continuing care contracts.

LEGISLATIVE COUNSEL’S DIGEST

AB 1169, as amended, Ruskin. Elderly care: continuing care contracts: financial reporting requirements.

Existing law establishes the State Department of Social Services and sets forth its various powers and duties, including, but not limited to, its licensure and regulation of community care facilities, including, but not limited to, residential care facilities for the elderly. Existing law provides for the regulation by the department of continuing care contracts and providers of continuing care and requires providers to submit an annual report of their financial condition. *Existing law requires the report to include, among other things, a disclosure of funds accumulated for identified projects or purposes, and any funds maintained or designated for specific contingencies.* Violation of certain of these provisions is a crime.

~~This bill would require that a continuing care contract include a disclosure that resident funds, including, but not limited to, entry fees, monthly fees, and other fees may be transferred to any other entity for the benefit of the residents, as specified, and would define “reserves”~~

for the purposes of the required annual financial report. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

This bill would require that the report also disclose funds that are expended for identified projects or purposes. The bill would also specify that the disclosure requirement includes, but is not limited to, projects designated to meet the needs of the continuing care retirement community as permitted by a provider's nonprofit status. This bill would require a disclosure made by a nonprofit provider to state how the project or purpose is consistent with the provider's tax-exempt status. The bill would also require a disclosure made by a for-profit provider to identify amounts accumulated for specific projects or purposes and amounts maintained for contingencies. By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1788 of the Health and Safety Code is~~
2 ~~amended to read:~~
3 ~~1788. (a) A continuing care contract shall contain all of the~~
4 ~~following:~~
5 ~~(1) The legal name and address of each provider.~~
6 ~~(2) The name and address of the continuing care retirement~~
7 ~~community.~~
8 ~~(3) The resident's name and the identity of the unit the resident~~
9 ~~will occupy.~~
10 ~~(4) If there is a transferor other than the resident, the transferor~~
11 ~~shall be a party to the contract and the transferor's name and~~
12 ~~address shall be specified.~~
13 ~~(5) If the provider has used the name of any charitable or~~
14 ~~religious or nonprofit organization in its title before January 1,~~
15 ~~1979, and continues to use that name, and that organization is not~~
16 ~~responsible for the financial and contractual obligations of the~~

1 provider or the obligations specified in the continuing care contract,
2 the provider shall include in every continuing care contract a
3 conspicuous statement which clearly informs the resident that the
4 organization is not financially responsible.

5 (6) The date the continuing care contract is signed by the
6 resident and, where applicable, any other transferor.

7 (7) The duration of the continuing care contract.

8 (8) A list of the services that will be made available to the
9 resident as required to provide the appropriate level of care. The
10 list of services shall include the services required as a condition
11 for licensure as a residential care facility for the elderly, including
12 all of the following:

13 (A) Regular observation of the resident's health status to ensure
14 that his or her dietary needs, social needs, and needs for special
15 services are satisfied.

16 (B) Safe and healthful living accommodations, including
17 housekeeping services and utilities.

18 (C) Maintenance of house rules for the protection of residents.

19 (D) A planned activities program, which includes social and
20 recreational activities appropriate to the interests and capabilities
21 of the resident.

22 (E) Three balanced, nutritious meals and snacks made available
23 daily, including special diets prescribed by a physician as a medical
24 necessity.

25 (F) Assisted living services.

26 (G) Assistance with taking medications.

27 (H) Central storing and distribution of medications.

28 (I) Arrangements to meet health needs, including arranging
29 transportation.

30 (9) An itemization of the services that are included in the
31 monthly fee and the services that are available at an extra charge.
32 The provider shall attach a current fee schedule to the continuing
33 care contract.

34 (10) The procedures and conditions under which a resident may
35 be voluntarily and involuntarily transferred from a designated
36 living unit. The transfer procedures, at a minimum, shall include
37 provisions addressing all of the following circumstances under
38 which a transfer may be authorized:

39 (A) A continuing care retirement community may transfer a
40 resident under the following conditions, taking into account the

1 appropriateness and necessity of the transfer and the goal of
2 promoting resident independence:

3 (i) The resident is nonambulatory. The definition of
4 “nonambulatory,” as provided in Section 13131, shall either be
5 stated in full in the continuing care contract or be cited. If Section
6 13131 is cited, a copy of the statute shall be made available to the
7 resident, either as an attachment to the continuing care contract or
8 by specifying that it will be provided upon request. If a
9 nonambulatory resident occupies a room that has a fire clearance
10 for nonambulatory residence, transfer shall not be necessary.

11 (ii) The resident develops a physical or mental condition that
12 endangers the health, safety, or well-being of the resident or another
13 person.

14 (iii) The resident’s condition or needs require the resident’s
15 transfer to an assisted living care unit or skilled nursing facility,
16 because the level of care required by the resident exceeds that
17 which may be lawfully provided in the living unit.

18 (iv) The resident’s condition or needs require the resident’s
19 transfer to a nursing facility, hospital, or other facility, and the
20 provider has no facilities available to provide that level of care.

21 (B) Before the continuing care retirement community transfers
22 a resident under any of the conditions set forth in subparagraph
23 (A), the community shall satisfy all of the following requirements:

24 (i) Involve the resident and the resident’s responsible person,
25 as defined in paragraph (6) of subdivision (r) of Section 87101 of
26 Title 22 of the California Code of Regulations, and upon the
27 resident’s or responsible person’s request, family members, or the
28 resident’s physician or other appropriate health professional, in
29 the assessment process that forms the basis for the level of care
30 transfer decision by the provider. The provider shall offer an
31 explanation of the assessment process. If an assessment tool or
32 tools, including scoring and evaluating criteria, are used in the
33 determination of the appropriateness of the transfer, the provider
34 shall make copies of the completed assessment available upon the
35 request of the resident or the resident’s responsible person.

36 (ii) Prior to sending a formal notification of transfer, the provider
37 shall conduct a care conference with the resident and the resident’s
38 responsible person, and upon the resident’s or responsible person’s
39 request, family members, and the resident’s health care
40 professionals, to explain the reasons for transfer.

1 ~~(iii) Notify the resident and the resident's responsible person~~
2 ~~the reasons for the transfer in writing.~~

3 ~~(iv) Notwithstanding any other provision of this subparagraph,~~
4 ~~if the resident does not have impairment of cognitive abilities, the~~
5 ~~resident may request that his or her responsible person not be~~
6 ~~involved in the transfer process.~~

7 ~~(v) The notice of transfer shall be made at least 30 days before~~
8 ~~the transfer is expected to occur, except when the health or safety~~
9 ~~of the resident or other residents is in danger, or the transfer is~~
10 ~~required by the resident's urgent medical needs. Under those~~
11 ~~circumstances, the written notice shall be made as soon as~~
12 ~~practicable before the transfer.~~

13 ~~(vi) The written notice shall contain the reasons for the transfer,~~
14 ~~the effective date, the designated level of care or location to which~~
15 ~~the resident will be transferred, a statement of the resident's right~~
16 ~~to a review of the transfer decision at a care conference, as provided~~
17 ~~for in subparagraph (C), and for disputed transfer decisions, the~~
18 ~~right to review by the Continuing Care Contracts Branch of the~~
19 ~~State Department of Social Services, as provided for in~~
20 ~~subparagraph (D). The notice shall also contain the name, address,~~
21 ~~and telephone number of the department's Continuing Care~~
22 ~~Contracts Branch.~~

23 ~~(vii) The continuing care retirement community shall provide~~
24 ~~sufficient preparation and orientation to the resident to ensure a~~
25 ~~safe and orderly transfer and to minimize trauma.~~

26 ~~(C) The resident has the right to review the transfer decision at~~
27 ~~a subsequent care conference that shall include the resident, the~~
28 ~~resident's responsible person, and upon the resident's or~~
29 ~~responsible person's request, family members, the resident's~~
30 ~~physician or other appropriate health care professional, and~~
31 ~~members of the provider's interdisciplinary team. The local~~
32 ~~ombudsperson may also be included in the care conference, upon~~
33 ~~the request of the resident, the resident's responsible person, or~~
34 ~~the provider.~~

35 ~~(D) For disputed transfer decisions, the resident or the resident's~~
36 ~~responsible person has the right to a prompt and timely review of~~
37 ~~the transfer process by the Continuing Care Contracts Branch of~~
38 ~~the State Department of Social Services.~~

39 ~~(E) The decision of the department's Continuing Care Contracts~~
40 ~~Branch shall be in writing and shall determine whether the provider~~

1 failed to comply with the transfer process pursuant to
2 subparagraphs (A) to (C), inclusive. Pending the decision of the
3 Continuing Care Contracts Branch, the provider shall specify any
4 additional care the provider believes is necessary in order for the
5 resident to remain in his or her unit. The resident may be required
6 to pay for the extra care, as provided in the contract.

7 (F) Transfer of a second resident when a shared accommodation
8 arrangement is terminated.

9 (11) Provisions describing any changes in the resident's monthly
10 fee and any changes in the entrance fee refund payable to the
11 resident that will occur if the resident transfers from any unit.

12 (12) The provider's continuing obligations, if any, in the event
13 a resident is transferred from the continuing care retirement
14 community to another facility.

15 (13) The provider's obligations, if any, to resume care upon the
16 resident's return after a transfer from the continuing care retirement
17 community.

18 (14) The provider's obligations to provide services to the
19 resident while the resident is absent from the continuing care
20 retirement community.

21 (15) The conditions under which the resident must permanently
22 release his or her living unit.

23 (16) If real or personal properties are transferred in lieu of cash,
24 a statement specifying each item's value at the time of transfer,
25 and how the value was ascertained.

26 (A) An itemized receipt which includes the information
27 described above is acceptable if incorporated as a part of the
28 continuing care contract.

29 (B) When real property is or will be transferred, the continuing
30 care contract shall include a statement that the deed or other
31 instrument of conveyance shall specify that the real property is
32 conveyed pursuant to a continuing care contract and may be subject
33 to rescission by the transferor within 90 days from the date that
34 the resident first occupies the residential unit.

35 (C) The failure to comply with paragraph (16) shall not affect
36 the validity of title to real property transferred pursuant to this
37 chapter.

38 (17) The amount of the entrance fee.

39 (18) In the event two parties have jointly paid the entrance fee
40 or other payment which allows them to occupy the unit, the

1 continuing care contract shall describe how any refund of entrance
2 fees is allocated.

3 ~~(19) The amount of any processing fee.~~

4 ~~(20) The amount of any monthly care fee.~~

5 ~~(21) For continuing care contracts that require a monthly care~~
6 ~~fee or other periodic payment, the continuing care contract shall~~
7 ~~include the following:~~

8 ~~(A) A statement that the occupancy and use of the~~
9 ~~accommodations by the resident is contingent upon the regular~~
10 ~~payment of the fee.~~

11 ~~(B) The regular rate of payment agreed upon (per day, week,~~
12 ~~or month).~~

13 ~~(C) A provision specifying whether payment will be made in~~
14 ~~advance or after services have been provided.~~

15 ~~(D) A provision specifying the provider will adjust monthly~~
16 ~~care fees for the resident's support, maintenance, board, or lodging,~~
17 ~~when a resident requires medical attention while away from the~~
18 ~~continuing care retirement community.~~

19 ~~(E) A provision specifying whether a credit or allowance will~~
20 ~~be given to a resident who is absent from the continuing care~~
21 ~~retirement community or from meals. This provision shall also~~
22 ~~state, when applicable, that the credit may be permitted at the~~
23 ~~discretion or by special permission of the provider.~~

24 ~~(F) A statement of billing practices, procedures, and timelines.~~
25 ~~A provider shall allow a minimum of 14 days between the date a~~
26 ~~bill is sent and the date payment is due. A charge for a late payment~~
27 ~~may only be assessed if the amount and any condition for the~~
28 ~~penalty is stated on the bill.~~

29 ~~(22) All continuing care contracts that include monthly care~~
30 ~~fees shall address changes in monthly care fees by including either~~
31 ~~of the following provisions:~~

32 ~~(A) For prepaid continuing care contracts, which include~~
33 ~~monthly care fees, one of the following methods:~~

34 ~~(i) Fees shall not be subject to change during the lifetime of the~~
35 ~~agreement.~~

36 ~~(ii) Fees shall not be increased by more than a specified number~~
37 ~~of dollars in any one year and not more than a specified number~~
38 ~~of dollars during the lifetime of the agreement.~~

1 ~~(iii) Fees shall not be increased in excess of a specified~~
2 ~~percentage over the preceding year and not more than a specified~~
3 ~~percentage during the lifetime of the agreement.~~

4 ~~(B) For monthly fee continuing care contracts, except prepaid~~
5 ~~contracts, changes in monthly care fees shall be based on projected~~
6 ~~costs, prior year per capita costs, and economic indicators.~~

7 ~~(23) A provision requiring that the provider give written notice~~
8 ~~to the resident at least 30 days in advance of any change in the~~
9 ~~resident's monthly care fees or in the price or scope of any~~
10 ~~component of care or other services.~~

11 ~~(24) A provision indicating whether the resident's rights under~~
12 ~~the continuing care contract include any proprietary interests in~~
13 ~~the assets of the provider or in the continuing care retirement~~
14 ~~community, or both. Any statement in a contract concerning an~~
15 ~~ownership interest shall appear in a large-sized font or print.~~

16 ~~(25) If the continuing care retirement community property is~~
17 ~~encumbered by a security interest that is senior to any claims the~~
18 ~~residents may have to enforce continuing care contracts, a provision~~
19 ~~shall advise the residents that any claims they may have under the~~
20 ~~continuing care contract are subordinate to the rights of the secured~~
21 ~~lender. For equity projects, the continuing care contract shall~~
22 ~~specify the type and extent of the equity interest and whether any~~
23 ~~entity holds a security interest.~~

24 ~~(26) Notice that the living units are part of a continuing care~~
25 ~~retirement community that is licensed as a residential care facility~~
26 ~~for the elderly and, as a result, any duly authorized agent of the~~
27 ~~department may, upon proper identification and upon stating the~~
28 ~~purpose of his or her visit, enter and inspect the entire premises at~~
29 ~~any time, without advance notice.~~

30 ~~(27) A conspicuous statement, in at least 10-point boldface type~~
31 ~~in immediate proximity to the space reserved for the signatures of~~
32 ~~the resident and, if applicable, the transferor, that provides as~~
33 ~~follows: "You, the resident or transferor, may cancel the transaction~~
34 ~~without cause at any time within 90 days from the date you first~~
35 ~~occupy your living unit. See the attached notice of cancellation~~
36 ~~form for an explanation of this right."~~

37 ~~(28) Notice that during the cancellation period, the continuing~~
38 ~~care contract may be canceled upon 30 days' written notice by the~~
39 ~~provider without cause, or that the provider waives this right.~~

1 ~~(29) The terms and conditions under which the continuing care~~
2 ~~contract may be terminated after the cancellation period by either~~
3 ~~party, including any health or financial conditions.~~

4 ~~(30) A statement that, after the cancellation period, a provider~~
5 ~~may unilaterally terminate the continuing care contract only if the~~
6 ~~provider has good and sufficient cause.~~

7 ~~(A) Any continuing care contract containing a clause that~~
8 ~~provides for a continuing care contract to be terminated for “just~~
9 ~~cause,” “good cause,” or other similar provision, shall also include~~
10 ~~a provision that none of the following activities by the resident,~~
11 ~~or on behalf of the resident, constitutes “just cause,” “good cause,”~~
12 ~~or otherwise activates the termination provision:~~

13 ~~(i) Filing or lodging a formal complaint with the department or~~
14 ~~other appropriate authority.~~

15 ~~(ii) Participation in an organization or affiliation of residents,~~
16 ~~or other similar lawful activity.~~

17 ~~(B) The provision required by this paragraph shall also state~~
18 ~~that the provider shall not discriminate or retaliate in any manner~~
19 ~~against any resident of a continuing care retirement community~~
20 ~~for contacting the department, or any other state, county, or city~~
21 ~~agency, or any elected or appointed government official to file a~~
22 ~~complaint or for any other reason, or for participation in a residents’~~
23 ~~organization or association.~~

24 ~~(C) Nothing in this paragraph diminishes the provider’s ability~~
25 ~~to terminate the continuing care contract for good and sufficient~~
26 ~~cause.~~

27 ~~(31) A statement that at least 90 days’ written notice to the~~
28 ~~resident is required for a unilateral termination of the continuing~~
29 ~~care contract by the provider.~~

30 ~~(32) A statement concerning the length of notice that a resident~~
31 ~~is required to give the provider to voluntarily terminate the~~
32 ~~continuing care contract after the cancellation period.~~

33 ~~(33) The policy or terms for refunding any portion of the~~
34 ~~entrance fee, in the event of cancellation, termination, or death.~~
35 ~~Every continuing care contract that provides for a refund of all or~~
36 ~~a part of the entrance fee shall also do all of the following:~~

37 ~~(A) Specify the amount, if any, the resident has paid or will pay~~
38 ~~for upgrades, special features, or modifications to the resident’s~~
39 ~~unit.~~

~~(B) State that if the continuing care contract is canceled or terminated by the provider, the provider shall do both of the following:~~

~~(i) Amortize the specified amount at the same rate as the resident's entrance fee.~~

~~(ii) Refund the unamortized balance to the resident at the same time the provider pays the resident's entrance fee refund.~~

~~(34) The following notice at the bottom of the signatory page:~~

—“NOTICE”

(date)

~~This is a continuing care contract as defined by paragraph (8) of subdivision (c), or subdivision (l) of Section 1771 of the California Health and Safety Code. This continuing care contract form has been approved by the State Department of Social Services as required by subdivision (b) of Section 1787 of the California Health and Safety Code. The basis for this approval was a determination that (provider name) has submitted a contract that complies with the minimum statutory requirements applicable to continuing care contracts. The department does not approve or disapprove any of the financial or health care coverage provisions in this contract. Approval by the department is NOT a guaranty of performance or an endorsement of any continuing care contract provisions. Prospective transferors and residents are strongly encouraged to carefully consider the benefits and risks of this continuing care contract and to seek financial and legal advice before signing.~~

~~(35) The provider may not attempt to absolve itself in the continuing care contract from liability for its negligence by any statement to that effect, and shall include the following statement in the contract: “Nothing in this continuing care contract limits either the provider's obligation to provide adequate care and supervision for the resident or any liability on the part of the provider which may result from the provider's failure to provide this care and supervision.”~~

~~(b) A life care contract shall also provide that:~~

~~(1) All levels of care, including acute care and physicians' and surgeons' services will be provided to a resident.~~

~~(2) Care will be provided for the duration of the resident's life unless the life care contract is canceled or terminated by the~~

1 ~~provider during the cancellation period or after the cancellation~~
2 ~~period for good cause.~~

3 ~~(3) A comprehensive continuum of care will be provided to the~~
4 ~~resident, including skilled nursing, in a facility under the ownership~~
5 ~~and supervision of the provider on, or adjacent to, the continuing~~
6 ~~care retirement community premises.~~

7 ~~(4) Monthly care fees will not be changed based on the resident's~~
8 ~~level of care or service.~~

9 ~~(5) A resident who becomes financially unable to pay his or her~~
10 ~~monthly care fees shall be subsidized provided the resident's~~
11 ~~financial need does not arise from action by the resident to divest~~
12 ~~the resident of his or her assets.~~

13 ~~(e) Continuing care contracts may include provisions that do~~
14 ~~any of the following:~~

15 ~~(1) Subsidize a resident who becomes financially unable to pay~~
16 ~~for his or her monthly care fees at some future date. If a continuing~~
17 ~~care contract provides for subsidizing a resident, it may also~~
18 ~~provide for any of the following:~~

19 ~~(A) The resident shall apply for any public assistance or other~~
20 ~~aid for which he or she is eligible and that the provider may apply~~
21 ~~for assistance on behalf of the resident.~~

22 ~~(B) The provider's decision shall be final and conclusive~~
23 ~~regarding any adjustments to be made or any action to be taken~~
24 ~~regarding any charitable consideration extended to any of its~~
25 ~~residents.~~

26 ~~(C) The provider is entitled to payment for the actual costs of~~
27 ~~care out of any property acquired by the resident subsequent to~~
28 ~~any adjustment extended to the resident under paragraph (1), or~~
29 ~~from any other property of the resident which the resident failed~~
30 ~~to disclose.~~

31 ~~(D) The provider may pay the monthly premium of the resident's~~
32 ~~health insurance coverage under Medicare to ensure that those~~
33 ~~payments will be made.~~

34 ~~(E) The provider may receive an assignment from the resident~~
35 ~~of the right to apply for and to receive the benefits, for and on~~
36 ~~behalf of the resident.~~

37 ~~(F) The provider is not responsible for the costs of furnishing~~
38 ~~the resident with any services, supplies, and medication, when~~
39 ~~reimbursement is reasonably available from any governmental~~
40 ~~agency, or any private insurance.~~

1 ~~(G) Any refund due to the resident at the termination of the~~
2 ~~continuing care contract may be offset by any prior subsidy to the~~
3 ~~resident by the provider.~~

4 ~~(2) Limit responsibility for costs associated with the treatment~~
5 ~~or medication of an ailment or illness existing prior to the date of~~
6 ~~admission. In these cases, the medical or surgical exceptions, as~~
7 ~~disclosed by the medical entrance examination, shall be listed in~~
8 ~~the continuing care contract or in a medical report attached to and~~
9 ~~made a part of the continuing care contract.~~

10 ~~(3) Identify legal remedies which may be available to the~~
11 ~~provider if the resident makes any material misrepresentation or~~
12 ~~omission pertaining to the resident's assets or health.~~

13 ~~(4) Restrict transfer or assignments of the resident's rights and~~
14 ~~privileges under a continuing care contract due to the personal~~
15 ~~nature of the continuing care contract.~~

16 ~~(5) Protect the provider's ability to waive a resident's breach~~
17 ~~of the terms or provisions of the continuing care contract in specific~~
18 ~~instances without relinquishing its right to insist upon full~~
19 ~~compliance by the resident with all terms or provisions in the~~
20 ~~contract.~~

21 ~~(6) Provide that the resident shall reimburse the provider for~~
22 ~~any uninsured loss or damage to the resident's unit, beyond normal~~
23 ~~wear and tear, resulting from the resident's carelessness or~~
24 ~~negligence.~~

25 ~~(7) Provide that the resident agrees to observe the off-limit areas~~
26 ~~of the continuing care retirement community designated by the~~
27 ~~provider for safety reasons. The provider may not include any~~
28 ~~provision in a continuing care contract that absolves the provider~~
29 ~~from liability for its negligence.~~

30 ~~(8) Provide for the subrogation to the provider of the resident's~~
31 ~~rights in the case of injury to a resident caused by the acts or~~
32 ~~omissions of a third party, or for the assignment of the resident's~~
33 ~~recovery or benefits in this case to the provider, to the extent of~~
34 ~~the value of the goods and services furnished by the provider to~~
35 ~~or on behalf of the resident as a result of the injury.~~

36 ~~(9) Provide for a lien on any judgment, settlement, or recovery~~
37 ~~for any additional expense incurred by the provider in caring for~~
38 ~~the resident as a result of injury.~~

39 ~~(10) Require the resident's cooperation and assistance in the~~
40 ~~diligent prosecution of any claim or action against any third party.~~

1 ~~(11) Provide for the appointment of a conservator or guardian~~
2 ~~by a court with jurisdiction in the event a resident becomes unable~~
3 ~~to handle his or her personal or financial affairs.~~

4 ~~(12) Allow a provider, whose property is tax exempt, to charge~~
5 ~~the resident on a pro rata basis property taxes, or in-lieu taxes, that~~
6 ~~the provider is required to pay.~~

7 ~~(13) Make any other provision approved by the department.~~

8 ~~(d) A copy of the resident's rights as described in Section 1771.7~~
9 ~~shall be attached to every continuing care contract.~~

10 ~~(e) A copy of the current audited financial statement of the~~
11 ~~provider shall be attached to every continuing care contract. For~~
12 ~~a provider whose current audited financial statement does not~~
13 ~~accurately reflect the financial ability of the provider to fulfill the~~
14 ~~continuing care contract obligations, the financial statement~~
15 ~~attached to the continuing care contract shall include all of the~~
16 ~~following:~~

17 ~~(1) A disclosure that the reserve requirement has not yet been~~
18 ~~determined or met, and that entrance fees will not be held in~~
19 ~~escrow.~~

20 ~~(2) A disclosure that the ability to provide the services promised~~
21 ~~in the continuing care contract will depend on successful~~
22 ~~compliance with the approved financial plan.~~

23 ~~(3) A copy of the approved financial plan for meeting the reserve~~
24 ~~requirements.~~

25 ~~(4) Any other supplemental statements or attachments necessary~~
26 ~~to accurately represent the provider's financial ability to fulfill its~~
27 ~~continuing care contract obligations.~~

28 ~~(f) A schedule of the average monthly care fees charged to~~
29 ~~residents for each type of residential living unit for each of the five~~
30 ~~years preceding execution of the continuing care contract shall be~~
31 ~~attached to every continuing care contract. The provider shall~~
32 ~~update this schedule annually at the end of each fiscal year. If the~~
33 ~~continuing care retirement community has not been in existence~~
34 ~~for five years, the information shall be provided for each of the~~
35 ~~years the continuing care retirement community has been in~~
36 ~~existence.~~

37 ~~(g) If any continuing care contract provides for a health~~
38 ~~insurance policy for the benefit of the resident, the provider shall~~
39 ~~attach to the continuing care contract a binder complying with~~
40 ~~Sections 382 and 382.5 of the Insurance Code.~~

~~(h) The provider shall attach to every continuing care contract a completed form in duplicate, captioned "Notice of Cancellation." The notice shall be easily detachable, and shall contain, in at least 10-point boldface type, the following statement:~~

~~"NOTICE OF CANCELLATION" (date)~~

~~Your first date of occupancy under this contract is: _____~~

~~"You may cancel this transaction, without any penalty within 90 calendar days from the above date.~~

~~If you cancel, any property transferred, any payments made by you under the contract, and any negotiable instrument executed by you will be returned within 14 calendar days after making possession of the living unit available to the provider. Any security interest arising out of the transaction will be canceled.~~

~~If you cancel, you are obligated to pay a reasonable processing fee to cover costs and to pay for the reasonable value of the services received by you from the provider up to the date you canceled or made available to the provider the possession of any living unit delivered to you under this contract, whichever is later.~~

~~If you cancel, you must return possession of any living unit delivered to you under this contract to the provider in substantially the same condition as when you took possession.~~

~~Possession of the living unit must be made available to the provider within 20 calendar days of your notice of cancellation. If you fail to make the possession of any living unit available to the provider, then you remain liable for performance of all obligations under the contract.~~

~~To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram~~

~~to _____~~

~~(Name of provider)~~

~~at _____~~

~~(Address of provider's place of business)~~

~~not later than midnight of _____ (date).~~

~~I hereby cancel this~~

~~transaction _____~~

(Resident or
Transferor's signature)"

(i) ~~A disclosure that resident funds, including, but not limited to, entry fees, monthly fees, and other fees, may be transferred from one continuing care retirement community to benefit residents at one or more other continuing care retirement communities or to meet community needs as required by a provider's nonprofit status under Section 501(c)(3) of the Internal Revenue Code, if the provider is meeting its statutory reserve requirements.~~

~~SEC. 2.~~

SECTION 1. Section 1790 of the Health and Safety Code is amended to read:

1790. (a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, the reserve information required by paragraph (2), Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information:

(1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves.

(2) Full details on the status, description, and amount of all reserves that the provider currently designates and maintains, and on per capita costs of operation for each continuing care retirement community operated. ~~As used in this paragraph, "reserves" means the reserves required by Sections 1792.3, 1792.4, and 1793.6, and either of the following:~~

~~(A) In the case of a not-for-profit provider, the entire excess of assets over liabilities.~~

~~(B) In the case of a for-profit provider, all reserves that are included within the provider's net worth.~~

(3) Disclosure of any ~~funds accumulated~~ *amounts accumulated or expended* for identified projects or purposes, including, but not

1 limited to, projects designated to meet the needs of the *continuing*
2 *care retirement* community as ~~required~~ *permitted* by a provider's
3 nonprofit status under Section 501(c)(3) of the Internal Revenue
4 ~~Code, and any funds maintained or designated for specific Code,~~
5 *and amounts maintained for contingencies. The disclosure of a*
6 *nonprofit provider shall state how the project or purpose is*
7 *consistent with the provider's tax-exempt status. The disclosure*
8 *of a for-profit provider shall identify amounts accumulated for*
9 *specific projects or purposes and amounts maintained for*
10 *contingencies. Nothing in this subdivision shall be construed to*
11 *require the accumulation of funds or funding of contingencies, nor*
12 *shall it be interpreted to alter existing law regarding the reserves*
13 *that are required to be maintained.*

14 (4) Full details on any increase in monthly care fees, the basis
15 for determining the increase, and the data used to calculate the
16 increase.

17 (5) The required reserve calculation schedules shall be
18 accompanied by the auditor's opinion as to compliance with
19 applicable statutes.

20 (6) Any other information as the department may require.

21 (b) Each provider shall file the annual report with the department
22 within four months after the provider's fiscal yearend. If the
23 complete annual report is not received by the due date, a one
24 thousand dollar (\$1,000) late fee shall accompany submission of
25 the reports. If the reports are more than 30 days past due, an
26 additional fee of thirty-three dollars (\$33) for each day over the
27 first 30 days shall accompany submission of the report. The
28 department may, at its discretion, waive the late fee for good cause.

29 (c) The annual report and any amendments thereto shall be
30 signed and certified by the chief executive officer of the provider,
31 stating that, to the best of his or her knowledge and belief, the
32 items are correct.

33 (d) A copy of the most recent annual audited financial statement
34 shall be transmitted by the provider to each transferor requesting
35 the statement.

36 (e) A provider shall amend its annual report on file with the
37 department at any time, without the payment of any additional fee,
38 if an amendment is necessary to prevent the report from containing
39 a material misstatement of fact or omitting a material fact.

(f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the waiver. If the department approves the request, the following shall be submitted to the department annually:

(1) Evidence of trust fund or performance bond and its amount.

(2) A list of continuing care residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section.

(3) A provider fee as required by subdivision (c) of Section 1791.

(g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund.

~~SEC. 3.~~

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.